

SECOND REGULAR SESSION

# SENATE BILL NO. 726

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR BLAND.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2655S.011

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## AN ACT

To amend chapter 565, RSMo, by adding thereto one new section relating to the creation of a death penalty commission.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 565, RSMo, is amended by adding thereto one new section, to be known as section 565.042, to read as follows:

**565.042. 1. A commission on the death penalty is hereby created within the department of corrections to consist of nine members: one member from each party of the house of representatives, to be appointed by the speaker of the house of representatives; one member from each party of the senate, to be appointed by the president pro tem of the senate; the state public defender or his or her designee; the attorney general or his or her designee; and three citizens of the state appointed by the governor. The members of the commission shall serve without compensation, but the members shall be reimbursed for necessary expenses incurred in the work of the commission. The commission shall be appointed and staffed on or before December 1, 2004.**

**2. The commission on the death penalty shall have an executive director appointed by the commission who shall establish and administer projects and programs for the operation of the commission as well as transmit monthly to the commission a report of the operations of the commission for the preceding calendar month.**

**3. The general assembly shall appropriate sufficient funds for the salary of the executive director and for all other necessary expenses of the commission.**

4. The commission on the death penalty shall hold public hearings and call before it witnesses to testify on issues relevant to the administration of the death penalty in Missouri.

5. The commission shall study all aspects of the death penalty as administered in the state. As part of this study, the commission on the death penalty shall review and analyze all cases in which charges of first degree murder, second degree murder, or voluntary manslaughter were filed on or after January 1, 1977. Such review and analysis shall examine all available data concerning:

(1) The facts of the offense including mitigating and aggravating circumstances;

(2) The county in which the charges were filed;

(3) The charges originally filed;

(4) The crime for which defendant was convicted, or to which defendant entered a plea of guilty or for which defendant was tried and acquitted;

(5) The sentence imposed;

(6) The age, race, gender, religious preference, and economic status of the defendant and of the victim;

(7) Whether evidence exists that the defendant was mentally retarded;

(8) The cost per disposition and implementation of sentence;

(9) The identity, number, and experience level of defense counsel at trial, appeal, and post-conviction;

(10) The identity, number, and experience level of trial and appellate prosecutors, including, where appropriate, members of the staff of the attorney general;

(11) The results of any appellate review; and

(12) The results of any post-conviction review in state or federal court.

6. In considering the experience level of attorneys and the adequacy of resources as described in subdivisions (9) and (10) of subsection 5 of this section, the commission shall consider the experience and training levels required by the Missouri supreme court, the experience and training levels required by the courts and legislatures of other jurisdictions in which the death penalty is imposed,

and the recommendations of national associations.

7. The review conducted by the commission shall include all such charges filed during the study period.

8. The commission shall report its findings and recommendations regarding the death penalty, including remedies for any deficiencies found by the commission, to the governor, members of the legislature, and the Missouri supreme court by January 1, 2006.

9. The commission shall make recommendations for amendments to the statutes and court rules pertaining to cases in which the death penalty is sought or imposed to provide assurances that:

(1) Defendants who are sentenced to death are in fact guilty of first degree murder;

(2) Defendants in cases in which the death penalty is sought are provided adequate and experienced counsel and adequate resources for the defense of their cases at the trial;

(3) Defendants in cases in which the death penalty is imposed are provided adequate and experienced counsel and adequate resources for the defense of their cases at the appellate and post-conviction stages;

(4) Race does not play an impermissible role in determining which defendants are sentenced to death;

(5) Appellate and post-conviction procedures are adequate to provide a fair opportunity for the courts of this state to correct errors and injustices that occurred at trial in cases in which the death penalty is imposed, including but not limited to allowing access to physical evidence for later testing and analysis; and

(6) All prosecutors throughout this state use similar criteria to determine whether to seek the death penalty in a case involving criminal homicide.

10. No execution of a defendant shall take place between the effective date of this section and January 1, 2006.

11. During the moratorium period, the special procedures in cases of first degree murder provided in sections 565.030 to 565.040 and any other proceedings related to capital cases, including motions for post-conviction relief, shall continue to be operative and shall proceed as if no such moratorium were in place, except that no day certain for execution shall be appointed that falls during the moratorium.

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